

**FACTORS THAT CAUSE UNPAID IDDAH MONEY
FOR EX-WIFE AFTER DIVORCE
(Implementation Study of Article 41 (c) Act Number 1 Year 1974
in the Religion Court of Malang)**

Scientific Article

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ABSTRAKSI

ELITA SAVIRA, 0910110096, 2013, Faktor Penyebab Tidak Dibayarnya Uang Iddah Untuk Mantan Istri Setelah Perceraian (Studi Implementasi Pasal 41 (c) Undang-Undang No. 1 Tahun 1974 di Pengadilan Agama Malang), Artikel Ilmiah, Hukum Perdata, Fakultas Hukum Universitas Brawijaya Malang, Dosen Pembimbing : Ulfa Azizah, SH., M.Kn. dan M. Hisyam Syafioedin, SH., 17 halaman.

Abstrak penelitian ini memaparkan atau menggambarkan serta menjawab permasalahan implementasi pasal 41 (c) Undang-Undang No. 1 Tahun 1974 di Pengadilan Agama Malang mengenai pembayaran uang iddah untuk mantan istri setelah perceraian. Disebutkan pada Pasal 41 (c) Undang-Undang No. 1 Tahun 1974, pengadilan dapat mewajibkan kepada mantan suami untuk memberikan biaya penghidupan dan atau menentukan sesuatu kewajiban kepada mantan istrinya, dalam cerai talak, mantan suami terhadap mantan istri, hakim diberikan kewenangan oleh undang-undang membebani suami untuk memberikan nafkah iddah dan mut'ah terhadap mantan istrinya.

Tipe penelitian ini tergolong penelitian empirical legal research dan dalam hal ini penelitian ini memilih dan menentukan lokasi di Pengadilan Agama Malang. Teknik pengumpulan data data yang diperoleh adalah melalui wawancara dengan hakim, panitera muda hukum serta pasangan yang telah bercerai sebagai respondennya. Dalam upaya mendeskripsikan, mengidentifikasi, dan menganalisis aturan dalam pasal tersebut, maka metode pendekatan yang dipakai adalah yuridis sosiologis, secara yuridis penelitian ini bertujuan untuk melakukan kajian terkait implementasi Pasal 41 (c) Undang-Undang No. 1 Tahun 1974 di Pengadilan Agama Malang dan pendekatan sosiologis dilakukan dengan cara mengkaji kondisi faktual yang ada dalam masyarakat.

Berdasarkan hasil penelitian, penulis memperoleh jawaban atas permasalahan yang ada, dalam setahun terdapat 587 perkara cerai talak dan dari sekian banyak kasus, faktor penyebab mantan suami tidak membayar uang iddah kepada mantan istrinya setelah terjadi perceraian, yaitu tidak mempunyai uang sama sekali, tidak mempunyai pekerjaan, enggan atau tidak ingin membayar, dan alasan lain-lain seperti sakit atau sedang tidak berada di Kota Malang. Beberapa upaya yang ditempuh oleh mantan istri adalah rekonvensi yang merupakan tuntutan untuk dipenuhinya nafkah iddah baginya. Upaya ini menghasilkan suatu kesadaran bagi mantan suami untuk melakukan kewajibannya sebelum putusan dibacakan. Upaya lain yaitu ketika sidang ikrar talak, dapat dilakukan sebuah musyawarah, yakni apabila mantan suami masih belum mampu melunasi seluruh kewajibannya, maka hakim memberi waktu kepada mantan suami dalam tempo tidak lebih dari enam bulan. Permohonan istri atas nafkah, biaya pemeliharaan anak, dan harta perkawinan dapat juga terjadi selama proses pemeriksaan berlangsung, pengadilan agama dapat menentukan jumlahnya yang disesuaikan dengan kemampuan suami dan tidak memberatkannya. Sedangkan, upaya terakhir yang dapat dilakukan setelah adanya putusan yaitu pengajuan perkara baru dan pengajuan eksekusi yang nantinya secara paksa akan membuat mantan suami menunaikan kewajibannya. Namun di Pengadilan Agama Malang, kedua upaya sebelum sidang ikrar talak sudah membuahkan hasil dan sangat jarang terjadi perceraian yang memasuki tahap eksekusi.

Kata Kunci : Uang Iddah, Implementasi, Pengadilan Agama

ABSTRACT

Elita Savira, 0910110096, 2013, Factors that cause unpaid of Waiting Period or Iddah Money To The Ex Wife After Divorce (Implementation Study of Article 41 (c) Act Number 1 Year 1974 in the Religion Court of Malang), Essay, Civil Law, Faculty of Law, Brawijaya University, Lecturer : Ulfa Azizah, SH., M.Kn. and M. Hisyam Syafioedin, SH., 17 pages.

Abstract: This study describes and answer the problem of the implementation of article 41 (c) of Law No. 1 of 1974 in the Religion Court of Malang on payment of the waiting period for ex-wife after the divorce. Mentioned in Article 41 (c) of Law No. 1 of 1974, the court may require the ex husband to provide cost of living and or determine any obligation to his ex wife. In divorce, ex-husband to the ex-wife, a judge granted the authority by law to provide a living burdensome waiting period and mut'ah against his ex-wife.

This type of research is classified as empirical legal research and in this study select and specify the location in the Religion Court of Malang. Data collection techniques are data obtained through interviews with judges, law clerks and couples who have been divorced as respondents. In an attempt to describe, identify, and analyze the rules in the article, the approach used is the juridical sociological, juridical study aims to conduct a study regarding the implementation of Article 41 (c) of Law No. 1 of 1974 in the Religion Court of Malang and sociological approaches made by reviewing the factual conditions that exist in society.

Based on the results of the study, the authors obtained answers to the problems that exist, within a year in 2011, there were 587 cases of divorces, causes ex-husband does not pay waiting period (iddah) money to his ex-wife after the divorce, for some reason, which had no money at all, not having a job, reluctant or do not want to pay, and other reasons such as illness or are not located in the city of Malang. Some of the efforts made by the ex-wife is a counterclaim which is a requirement for the fulfillment of her maintenance. These efforts may result in an awareness of the ex-husband to perform his duties before the verdict was read. Another effort that is when the divorce trial pledge, to do a consultation, which is an ex-husband is still not able to pay off all of its liabilities, the judges give time to her ex husband in the space of not more than six months. Application for the wife of a living, the cost of child care, and marital property can also occur during the trial, the court may determine the amount of religion that are tailored to the ability of the husband and not against him. Meanwhile, last-ditch effort to do after the decision and the filing of a new case filings execution will be forced to make-ex-husbands fulfill its obligations. But in the Religion Court of Malang, the two efforts before the trial has produced something and divorce is rare to enter the execution phase.

Key Words : Payment of Waiting Period or Iddah, Implementation, Religion Court

A. Introduction

In principle, marriage aims to attain eternal happiness or eternal relation between husband and wife as mentioned in article 3 Compilation of Islamic Law, "Marriage is aimed to bringing life into *sakinah, mawaddah, warahmah*". Marriage is the most sacred bonds and most sturdy, and no arguments clearly indicating the nature of holiness which is so great other than Allah himself who called the bond between husband and wife with *mitsaqun ghalizun* (strong agreement).

But in fact, a family after marrying will not go smoothly as we had hoped and did not rule out the possibility that conflict will arise in a marriage. In this case, divorce is seen as the end of a marriage instability which spouses live apart and then officially recognized by the law. Indeed, the Prophet forbade divorce between husband and wife, it was done at the initiative of either the man or the woman or her husband or wife because all forms of divorce would be bad for both parties. In addition, the divorce will bring His wrath when the cause is indeed the things that Allah hates.

So that Allah in His Shari'ah emphasizes peace or reconciliation as a better way of divorce for married couples, and giving them the opportunity to improve their relationship that had become strained. There is a period that means short separation in Shari'a commonly known as the *iddah* or waiting period before a woman remarries after the death of her husband or divorce him and the scholars agreed that the waiting period is an obligatory.¹ As has been described in the Qur'an Surah Al-Baqarah: 228. Waiting period is the time to wait for the ex-wife who has been divorced by her husband, either because of divorce or divorced. Or because her husband died that the waiting time was the ex-wife should not hold back marriage with another man.²

Problems of *iddah* is an issue that must be understood by all Muslims, both men and women, because in addition to containing some obligation that must be carried out by an ex-wife, *iddah* also ordered the husband to fulfill his duty, which

¹ Abdur rahman, *Perkawinan Dalam Syari'at Islam*, Jakarta, rineka cipta, 1996, page.120.

² Muhammad Daud Ali, *Asas-asas Hukum Islam Tentang Perkawinan*, cet. 6, PT. Raja Grafindo, Pustaka Pelajar, Jakarta, page. 125

is to pay the money for the broken marriage waiting period for divorce. When the husbands neglect this obligation, the ex-wife can file a complaint to the Religious Courts. The suit can be brought together when the ex-wife filed for divorce or can be filed at a later lawsuit. And in this case religious court is competent authorities in solving divorce especially in particular problems such as waiting period or iddah payment in accordance with the provisions of Article 41 (c) of Law No. 1 of 1974 on Marriage which states that the court may require the ex-husband to provide cost livelihood and or determine any obligation to his ex-wife. In fact, the phenomena arising from the divorce when the ex-husband does not perform its obligations to the rights of the ex-wife during the waiting period. Given the existing data in the Religious Court of Malang in 2011, 587 in the form of talaq divorce case has been decided and based on this huge number of divorce made the writer wants to investigate further on how the implementation of article 41 of Law No. c. 1 of 1974 on Marriage on payment of the waiting period after divorce.

B. Problem

1. What factors led to ex-husband does not pay money of iddah to his ex-wife after the divorce regarding the implementation of the provisions of article 41 (c) of Law No. 1 of 1974.
2. How is the efforts of ex-wife in order to get her right in the form of cash money of waiting period (iddah money) after a divorce with her husband and how is the result of that effort.

C. Research Method

The type of this research is empirical legal research because it might examine the implementation of the rule of law, in this case, examines the implementation of Article 41 (c) of Act No. 1 Year 1974 About Marriage which stated that Religious Court may require ex-husband to give the cost of livelihood and or determine any obligation to his ex-wife. In addition, this study aims to determine the facts that occurred in the Religious Court of Malang on payment of the waiting period for ex-wife after the divorce and the ex-wife's effort to gain the

right to cash iddah. This study uses juridical sociological, juridical study aims to conduct a study regarding the implementation of Article 41 (c) of Law No. 1 of 1974 On Marriages the Religious Court of Malang. While the sociological approach made by reviewing the factual conditions that exist in society. Sociological research is called for researchers to focus on the object, which some survey respondents. So this study aims to fact finding, then to the problem identification, as well as problem solution.³

The research was to choose and specify the location in the Religious Court of Malang. Research locations were chosen with consideration and the reason that the institution is the place that handles, processes and deciding cases payment waiting period after divorce, as in case No. 1790/Pdt.G/2011/PA.Mlg, and thus is the choice of location is methodologically reliable. While the types of data used in this study consisted of two types, namely:

- a. Primary data is the data that is obtained directly from the field data collection from relevant sources or case studies. Here, the primary data is the result of interviews with the respondents.
- b. Secondary data that is additional data to support the data obtained from the data subject documentation and archives and research libraries include the official documents, books, research reports the results of a tangible reports, theses, and theses related to the theme of the study.

The source of the data in this study are divided into:

- a. The primary data that is empirical data in the study site in the form of interviews with respondents or key informant in this case was the judge, clerks and couples who have been divorced. Primary data can also be referred to as the data is collected, processed and presented by researchers from the first or original sources containing information as mentioned above.⁴
- b. Secondary data that is based on a search of official documents in the Religious Court of Malang related to the iddah decision maintenance, as well as related

³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI Press, page 86.

⁴ Tatang M. Amirin, *Menyusun Rencana Penelitian*, Jakarta, PT Raja Grafindo Persada, 1995, page 132

legislation such as Law No. 1 of 1974 and the Compilation of Islamic Law. To obtain data with respect to this research, the authors use interviews and literature. The primary data collection method in this study were interviews in the field, the researchers went directly to the object of research is expected to produce objective data. Interviewing is one of the techniques of data collection by making unilateral questioning systematically, based on the purpose, this study uses the type independent interviews, the interviews using an interview guide made by:

- 1 of Chief Justices
- 1 person Junior Registrar Law
- 10 people who have been divorced, so that all of the study's respondents numbering 12 people.⁵

In this case describes the results of the judge's ruling on payment of iddah and *mut'ah* from interviews conducted were then analyzed. While the writing is done by using the inductive method is a way of thinking which starts from specific facts in the form of facts leading to a conclusion of a general nature.

D. Content

Any Factors That Caused The Ex-Husband Does Not Paid Iddah Money

In a divorce case in accordance with the provisions of Article 114 Compilation of Islamic Law (KHI), divorce can occur because of a divorce from her husband or divorce lawsuit by ex-wife, divorce can only be done on the basis of the judge's ruling before the trial court after the Court of Religion which is not succeeded in reconciling the parties (Article 115 KHI). Divorce happens because of divorce from a husband to his ex-wife, then in accordance with the provisions of Article 41 (c) of Law No. 1 of 1974 on Marriage, the court may require the ex-husband to give the cost of livelihood and or determine any obligation to his ex wife. This article determines the obligation of the ex-husband in the form of *mut'ah*, iddah money (when ex-wife did not nusyus) and provide for the children.

Iddah maintenance living is a gift from ex-husband to his ex-wife during a specific time (during the waiting period) after saying talaq by the husband. Iddah income generally in the form of money. While *mut'ah* money is an integral with a

⁵ Saifudin Azwar, *Metode Penelitian*, Yogyakarta, Pustaka Pelajar, 2003, page 126.

gift of money when the waiting period to ex-wife from ex-husband as a result of divorce, where the ex-wife has been sentenced to divorce. Mut'ah itself can be a noun/ jewelry or money, the cost of living is generally adjusted by agreement or by the ability of the husband. Mut'ah must be given by the husband to the condition has not been set for ex-wife's dowry *ba'da al dukhul* and divorce on the husband's will.

During this waiting period actually aiming to convince the ex-wife's womb vacancy to avoid commingling or confusion for the child conceived lineage. In addition to thinking again about their path, whether to refer back or continue their divorce has occurred. For the ex-wife who has been divorced by her husband, the ex-wife of both divorced parties the life of the ex-husband or wife is pregnant or not, then the ex-wife of the mandatory waiting period for a period as specified in the Compilation of Islamic Law Article 153, which asserts that for an ex-wife who broke up his marriage applicable waiting period or iddah, except *qobla dukhul* and marriage broke up not because of her husband's death.

After the divorce under civil law and Islamic rules' charged the husband to provide maintenance to the ex-wife. And if the husband does not give it, living life (spending money) then the ex-wife can submit the matter to the religious court. Obligation of the husband to his ex-wife as aforesaid shall come into force after no perfect *tamkin* from his ex-wife. Ex-wife can liberate him from the obligations to him. Obligation of the husband's is killed when ex-wife's *nushuz*. Of these provisions husband could not perform the obligation are:

- a. If the ex-wife really has release it
- b. If the ex-wife in *nushuz* circumstances, the result of legal rights in the ex-wife of iddah fall with its own

Actually attitude towards religious courts to the ex-husband who did not fulfill their obligations during the waiting period to the ex wife depends on the wife of itself did she take the case to the Court of religion or not. Divorce Judgment is always followed by the obligation to provide a living for his wife and children, because:

- a. In the lawsuit (talaq divorce) against the ex-husband and wife, the judge granted the authority by law to burden the ex-husband to provide maintenance mut'ah and iddah against ex-wife;
- b. Ex-wife's side of the counter claim is also granted the right to file a counter claim for child maintenance, mut'ah and iddah;
- c. If contested divorce from ex-wife, filed for divorce in addition to a living once filed for an ex-wife (self / plaintiff) and a living child.

Regarding the payment of money to iddah ex-wife after the divorce, in 2011, noted that in a year there were 587 cases of divorce case was decided based on reports of the Religious Court of Malang. And of the many cases of divorce divorce authors take 10 people to serve as research samples and can be concluded in this study some of the factors that led to ex-husband does not pay iddah money to his ex-wife after the divorce in the jurisdiction of the Religious Court of Malang, which is as follows:

1. No money at all
2. Do not have a job
3. Reluctant or do not want to pay

Furthermore, outlined in table form on a variety of factors that cause ex-husband does not pay iddah money to his ex-wife after the divorce, as follows.

Factors That Caused The Ex Husband Does Not Pay Iddah Money
To the ex-wife After Divorce

n = 10

FACTORS	FREQUENCY	PROCENTAGE
No money at all	3	30
Not having a job	6	60
Reluctant or do not want to pay	1	10
Total	10	100

Source : Primary data, 2012 (processed)

In the waiting period or iddah payment for ex-wife after the divorce, while the specific circumstances that led to a divorce is not followed by the fulfillment of obligations by the ex-husband. Factors that causing ex-husband does not pay iddah money to his ex-wife in the Religious Court Malang is the ex husband did not have any money at all, do not have jobs, are reluctant or unwilling to pay. The first factor to be addressed in this case is a factor that ex-husband does not pay iddah because the ex-husband did not have any money at all and the percentage reaches 30%. This factor can actually be classified as pressure factor because of the economy mostly poor ex-husband and that's why he has no money to pay. Indeed, this factor is common since most ex-husband did not prepare in advance for the cost of waiting period money and ex-husband were just preparing to divorce administrative costs itself. But in fact, ex-husband have to pay and the judge could give him time to find the money first origin over a period of six months.

The second factor ex-husband did not pay the money to the ex-wife of the waiting period for ex-husband does not have a job, the reason is often the answer to her husband when the judges gave him the obligation to pay iddah money. In fact most of the reasons are used to avoid the payment of waiting period money, but returned again that in spite of his having or not having a job, he still had to pay for it. In this case, the percentage achieving the first rank or the highest yield with a value of 60%.

The third factor that husbands are reluctant or do not want to pay iddah money. This factor is different from other factors because even though he had or did not have any money, he still did not want to pay iddah money. The difference is that this factor arises from the ex-husband itself. Surely this is not allowed and the judge must still advise the husband so that he would pay for it. If he was not willing to pay then back again to the fact that the pledge of divorce will not happen soon. Percentage value for this factor is 10% and third place. This suggests that the motivation to pay iddah not arise from within the husband it's own but more driven by factors beyond their external factor of husbands.

In addition to the three factors above, there are a few reasons actually used by the ex-husband who does not pay iddah to his ex-wife, ill and was not in place

in this case is the city of Malang. Writer, both of these reasons fall into other grounds that are used in addition to the three reasons above. If this occurs, then the divorce trial pledge will still be put off by the judges to the husband and say a pledge to pay iddah. So these reasons can not be used simply to avoid payment of iddah. In a study of a sample, this factor shows the results of 0%, but the reason is still exist and used to be the reason the payment of waiting period money.⁶

Based on the analysis, it is known that the economic problems or when the ex husband do not have a job to be the biggest factor in contributing to compliance paying iddah. This shows that there are many husbands who are not on time with the requested postponement. Simple analysis shows that there is a significant effect of motivation on adherence ex-husband to pay iddah. It draws on the results of the factor analysis and compliance motivation, motivation to pay iddah not generated from within ex-husband himself or consciousness can not be said of the ex-husband, but the stronger the force (thrust) from the external which in this case is the judge. Because motivation to pay iddah not boost from inside the ex-husband himself can be seen that timeliness to pay iddah is still weak. The main factors in noncompliance ex-husband pay iddah for a relatively low value of the income or no income at all. Although there is a strong motivation to perform any obligation to pay iddah money does not guarantee the iddah the husband will pay, this is caused by the ability of the ex-husband of economic factors.

Efforts Of The Ex Wife To Gets Money For Iddah and The Results

A husband who has divorce (talaq raj'i) his ex-wife, shall provide for the ex-wife during the waiting period, including food, clothing, and shelter, in consideration that they can be 'back together during iddah not depleted. Iddah period is the waiting period for a woman after her husband divorced, which in those days she was not allowed to remarry others before expiration of iddah. Thus basically between husband and ex-wife still had a legal relationship and still dependents, therefore still be living ex-husband's responsibility to the ex-wife. With reference to the interest income for the ex-wife who is undergoing a period of iddah, then it seems appropriate in the legal system in Indonesia marriage, if

⁶ Interview result with Drs. Munasik, MH in Malang, 7 Desember 2012

the husband is going to divorce his ex-wife he have to pay a sum of money as a form of giving a living to the ex-wife. Provision is required with or without the request of the ex-wife. This provision is intended to realize a fair divorce for the ex wife to divorce her husband not to suffer from not being able to meet their needs.

Basically, in the event of talaq divorce, ex-husband must provide some cost to his wife and children left behind. There is *mut'ah* cost, no obligation to pay the dowry if it is not paid off, and there is also the cost of child care and the cost of waiting period (*iddah*). The obligation to provide cost was defined in the Marriage Act and the Compilation of Islamic Law. But in practice, the fulfillment of the obligation is not going well. Religious court ruling requiring the ex-husband to pay such costs are often overlooked. As in case number 1790 / Pdt.G / 2011 / PA.Mlg. Religious Courts of Malang husband decided to give his ex-wife *mut'ah* and maintenance to their children until the children are adults and can take care of himself.

Indeed, before a case is terminated, the ex-wife can file a claim for *reconvensi* or the living fulfillment of her *iddah*. On the basis of a divorce case when the ex-wife filed a counterclaim, then it is permissible and does not violate the rules of religion. *Reconvensi* proposed as the defendant's ex-wife in a divorce case divorce, nor does it violate the rules of law. Examination conducted religious court Malang judges against ex-wife was *reconvensi* in accordance with existing rules. The judges did not simply grant the ex-wife's claims in his petition before hearing testimony from the husband (the defendant) in response to a lawsuit the ex wife. In the face of the demands of the ex-wife, the judge weighed ex-wife with the evidence held to the truth and validity of the indictment.

In an effort *reconvensi* performed ex-wife as mentioned above, this effort could result in a sense for the husband to perform his duties before the verdict was read and without a delay divorce trial pledge. Because the base is that the people charged were free of debts, and the claimant must prove the opposite situation with this base. Then the number of living, there is no rule of law both in the Islamic and civil law in Indonesia, which contains the rules of the nominal amount of the amount of income that must be accepted ex-wife every day, therefore in

determining the amount of income religious court of Malang judges vary between case verdict different from the same case. The amount granted livelihoods depend on demand factors and considerations ex-wife ex-husband in fulfilling it, the most important living is not too little, as it will afflict ex-wife but not too much so troublesome ex-husband. The judge does not impose on the parties beyond the limits.

Circumstances where the court granted the petition for divorce and the divorce decision was legally binding, the religious court may hold a hearing testimony pledge divorce, since divorce happens and the bond of marriage between husband and ex-wife to be broken. When the pledge divorce trial, there was a consensus, that if the husband is still not able to pay off all of its liabilities, the judge asked the opinion ex-wife. If the ex-wife does not mind to delay, then the talaq is pronounced even pledge his rights have not been received. However, if the ex-wife of an objection, the trial was adjourned to slightly delay the husband to fulfill his obligations. Trial delay period according to the husband's willingness to terms not exceeding six months, but not more than that because the judges are not actually entitled to pledge delay divorce until the protracted time.⁷

When analyzing the ex-husband who did not want to pay cash for a living, then he asked for leniency the court to be paid by way of installments, it is legally allowed because there is no rule that requires cash payment. Another consideration for a living usually paid periodically to the tempo of time, such as once a month or once a week so that payment of income for the three month waiting period is not duly paid all at once. Financial Officer or the cashier at the Religious Court of Malang get a job in addition to those set out in the pattern Bindalmin (Guidance and Control Administration Religious Court), the income paid by a husband who was then given again to the ex-wife after he divorced the pledge divorce trial testimony. Tasks like these though not stipulated in the Act but also not a wrong thing, because this step is done for a noble purpose. The application of the rule is intended to prevent fraud in the trial as well as a way to make a living from the ex-wife of her ex-husband. In the implementation of the

⁷ ibid

provision of a living ex-wife in the Religious Court of Malang, if the ex-wife asked the husband outside the limits, then the judge will combine the opinion ex-wife with a husband's response. That way there is a deal that is not expected to weigh both sides. Therefore, the judge in deciding the need for foresight and fair decision is expected to reassure the parties litigant.

The deferment is done religious court of Malang judges if the ex-wife in divorce before accepting objections rights, then it is not against the rules. Because divorce trial as the embodiment execution pledge divorce, may be done at any time, not more than six months since the decision is not legally binding. As in Article 70 paragraph (6) of Law 7 Th.1989 which reads: "If a husband within a period of six months from the day of the trial testimony established pledge divorce, do not represent them or not sending guardian despite getting called legally and worth, then the setting power is end, and the divorce can not be filed again by the same reason"

From the article it can be understood that the expiration time of trial testimony pledge divorce is six months, so the trial was postponed not violate the law. The delay is intended as a measure of precaution (preventive) in order to carry out the obligations of the husband before getting their rights. The obligation is to pay a living husband, the husband is permitted to he divorced his ex-wife. When analyzing the actions of a husband who could not pay a living in cash, then it was due and she still could not pay it off then the judge will make a persuasive approach is a good approach is to ask the judge what he does and how much income, if it turns out the husband was not able to because of limited income to pay the judge will send husband for his wallet before the court and asked how the contents of the money in his wallet right now and after that the judge ordered the husband to spend the money and gave it to his ex-wife.

This is done of course with the consent of both parties and there is no coercion and usually ex-wife was able to accept with understanding and sincerity as most divorces occur in the Religious Court of Malang economic backgrounds. If both parties have agreed that the hearing will proceed as usual, but if not there was an agreement and both parties still requested to immediately be given a living iddah the judge will give you information about the various possibilities that will

be faced by the parties, and propose suggestions and solutions must be done in order to avoid potential bad, what the judge is not prohibited by law.

As mentioned previously, that Islam requires the husband to provide for his ex-wife. Because the presence of wedlock, the ex-wife is bound to her husband. This obligation will not fall over the causes and conditions are eligible to receive ex-wife of a living being met. If then the husband does not want to fulfil its obligations, income becomes payable husband should be justified. Debt income is legitimate, it will not fall unless it has been paid or released.

And when in all likelihood the above, there is also a fulfillment of the ex-wife by a ex husband, then here are two options that can be chosen by the ex-wife, a new litigation and execution. Here, however, is indeed futile if filing a new case is selected as the solution, because the data and the case in question had been asked before. So it's not much, and almost no one chose this path. But if there are those who still wish to make a new case, it will still be accepted by the religious court the same line as usual divorce litigation.

On the other hand, the execution of a court decision on the fulfillment of living more of a choice. Fulfillment of obligations it is very dependent on the good faith husbands. But when his ex-wife to get a living right is fixed, either through *reconvensi* or delay in payment, he usually returned to the religious court with two options that had been mentioned. In practice, the ex-wife can apply force to the execution of the court relating to the fulfillment of religious living. Basically, the forced execution, the ex-wife should prove a number of properties owned ex-husband can roughly take the court in execution of confiscation.⁸

E. Conclusion

1. There are at least three factors that cause ex-husband does not pay money to iddah his ex-wife after the divorce, namely:
 - a. No money at all
 - b. Not having a job
 - c. Reluctant or do not want to pay

⁸ Interview result with Drs. Munasik M.H. on 13 Desember 2012

Among the three factors, the factors husband does not have a job to be the most dominant factor ex-husband does not pay his ex-wife iddah.

2. Counterclaim is a lot of effort made by the ex-wife to demand fulfillment of living iddah. That effort was able to realize my ex-husband to pay his ex-wife iddah. Additionally deliberation before trial divorce pledge also proved fruitless so very rare divorce litigation enters new phase or execution.

Suggestion

1. It should be in all divorce cases divorce, ex-wife asked the entire fulfillment of their rights before the trial judge held a pledge divorce, get through the counterclaim or deliberation.

2. Should anything happen in the case of divorce, a step taken is a step in the completion of an effective, efficient and equitable for all parties aimed at addressing each case is different. Because legal action to claim the ex-wife of a living husband after divorce in practice it is unlikely to be implemented because of certain constraints.

3. Should socialization program by the government through the Ministry of Religious Affairs, the National Population and Family Planning Board (BKKBN) or the Religious Affairs Office (KUA) to the husband and wife before marriage should be improved. So the rights and obligations of husband and wife is a thing to be known by all couples, not just in the marriage, but also the time of the divorce happen later and should be legal sanctions for husbands who do not pay a living waiting period specified in Law No. 1 Year 1974 About Marriage as far fulfillment of the rights of ex-wife after the divorce could not be guaranteed.

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